

AMENDED IN ASSEMBLY MAY 26, 2009

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY MARCH 5, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 74

Introduced by Assembly Member Chesbro
(Principal coauthor: Assembly Member Nielsen)
(Coauthor: Senator Wiggins)

December 16, 2008

~~An act to add Sections 12645, 12646, 12647, 12670.22, and 12670.23 to, and to add the heading of Article 2 (commencing with Section 12645) to Chapter 2 of, and to repeal the heading of Article 2 (commencing with Section 12648) of Chapter 2 of, Part 6 of Division 6 of, the Water Code, relating to flood control. An act to add Sections 12670.22 and 12670.23 to the Water Code, relating to flood control.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 74, as amended, Chesbro. Flood control: Middle Creek and Hamilton City Flood Damage Reduction and Ecosystem Restoration Projects.

(1) Existing law provides for state cooperation with the federal government in the construction of specified flood control projects.

~~This bill, with a certain exception, would provide that specified provisions of law that authorize financial assistance to flood control projects in the Sacramento-San Joaquin Watersheds shall not be construed to expand the liability of the state for the operation and maintenance of any flood management facility that is outside the scope of a designated state plan of flood control. The bill would authorize the~~

state to provide ~~subvention~~ funds for the Middle Creek Flood Damage Reduction and Ecosystem Restoration Project in Lake County and the Hamilton City Flood Damage Reduction and Ecosystem Restoration Project in Glenn County, at an estimated cost to the state of the sum that may be appropriated by the Legislature for state cooperation, upon the recommendations and advice of the Central Valley Flood Protection Board. The bill would require ~~the~~ Lake County Watershed Protection District and Reclamation District No. 2140 to carry out those respective projects ~~and, to give prescribed assurances to the Secretary of the Army, and to enter into specified agreements with the Department of Water Resources,~~ thereby imposing a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. The heading of Article 2 (commencing with~~
- 2 ~~Section 12648) of Chapter 2 of Part 6 of Division 6 of the Water~~
- 3 ~~Code is repealed.~~
- 4 ~~SEC. 2. The heading of Article 2 (commencing with Section~~
- 5 ~~12645) is added to Chapter 2 of Part 6 of Division 6 of the Water~~
- 6 ~~Code, to read:~~
- 7
- 8 ~~Article 2. Projects in the Sacramento-San Joaquin Watersheds~~
- 9
- 10 ~~SEC. 3. Section 12645 is added to the Water Code, to read:~~
- 11 ~~12645. The Legislature finds and declares all of the following:~~
- 12 ~~(a) In 1911, the Legislature adopted a flood control plan for the~~
- 13 ~~Sacramento Valley proposed by the federal California Debris~~
- 14 ~~Commission and created the Reclamation Board to implement the~~
- 15 ~~plan, working with the federal government. The state's adoption~~
- 16 ~~of a valley-wide flood management plan was intended to counteract~~
- 17 ~~local flood control projects that conflicted with each other, in what~~
- 18 ~~has been called "dog-eat-dog reclamation." Six years later,~~
- 19 ~~California gained Congressional authorization for the United States~~

1 Army Corps of Engineers (Corps) to collaborate with the state in
2 building and maintaining the Sacramento River Flood Control
3 Project.

4 (b) For most of the 20th century, the state and federal
5 governments built or rebuilt levees, weirs, and bypasses to increase
6 conveyance of flood waters downstream. The Sacramento River
7 Flood Control Project and the federal-state flood control project
8 in the San Joaquin Valley include approximately 1,600 miles of
9 levees and other facilities to reduce central valley flood risk, now
10 defined as the State Plan of Flood Control in subdivision (j) of
11 Section 5096.805 of the Public Resources Code. The Corps often
12 constructed the federal “project levees” in both the Sacramento
13 and San Joaquin Basin from already existing private levees. In
14 1953, the federal government transferred the Sacramento River
15 Flood Control Project to the state, which in turn passed
16 responsibility for operation and maintenance to local reclamation
17 districts.

18 (c) In 2003, a state Court of Appeal in *Paterno v. State of*
19 *California* (2003) 113 Cal.App.4th 998, highlighted the liability
20 risks the state faces from failed levees. The *Paterno* court held the
21 state liable for failure of a levee that was generally operated and
22 maintained by a local levee maintenance district. The state’s
23 liability was substantial because homes and a shopping center were
24 built behind the levee and suffered from the resulting flood.

25 (d) Up to the time of the *Paterno* decision, the state authorized
26 funding for various flood control projects in the Sacramento-San
27 Joaquin River watershed. These statutory authorizations included
28 varying provisions regarding responsibility and liability for
29 operation and maintenance of the flood control facilities, and may
30 or may not have incorporated the specified facilities into the
31 federal-state Sacramento River or San Joaquin River flood control
32 projects. After the court ruling in *Paterno*, the status of each flood
33 facility became critically important to determining liability, and
34 legal ambiguities led to questions about whether particular facilities
35 were incorporated into a federal-state flood control project. In
36 some cases, despite a location between two project levees, certain
37 levees remain outside the jurisdiction of a federal-state flood
38 control project, with local agencies retaining liability.

39 (e) In 2006, California voters approved the Disaster
40 Preparedness and Flood Prevention Bond Act of 2006, which

1 authorized the issuance of general obligation bonds in the amount
2 of \$4.9 billion for flood protection and defined the federal-state
3 flood control project as the “State Plan of Flood Control.” The
4 following year, the Legislature passed a package of bills to reform
5 state flood protection policy in the central valley. These laws
6 required the Department of Water Resources to develop, and the
7 Central Valley Flood Protection Board to adopt, a Central Valley
8 Flood Protection Plan, which is broader than the State Plan of
9 Flood Control, affecting the entire watersheds of the Sacramento
10 and San Joaquin Valley. These laws addressed state liability for
11 central valley flood control facilities, ensuring that the state’s
12 liability was limited to facilities identified in the State Plan of
13 Flood Control. These laws did not specifically address the facilities
14 described in this article.

15 SEC. 4. Section 12646 is added to the Water Code, to read:

16 12646. Unless the context requires otherwise, the definitions
17 set forth in this section govern the construction of this chapter.

18 (a) “Board” means the Central Valley Flood Protection Board.

19 (b) “Plan” means the Central Valley Flood Protection Plan.

20 (c) “Project levee” means any levee that is part of the facilities
21 of the State Plan of Flood Control.

22 (d) “Public safety infrastructure” means public safety
23 infrastructure necessary to respond to a flood emergency, including,
24 but not limited to, street and highway evacuation routes, public
25 utilities necessary for public health and safety, including drinking
26 water and wastewater treatment facilities, and hospitals.

27 (e) “Sacramento-San Joaquin Valley” means any lands in the
28 bed or along or near the banks of the Sacramento River or San
29 Joaquin River, or any of their tributaries or connected therewith,
30 or upon any land adjacent thereto, or within any of the overflow
31 basins thereof, or upon any land susceptible to overflow therefrom.
32 The Sacramento-San Joaquin Valley does not include lands lying
33 within the Tulare Lake basin, including the Kings River.

34 (f) “State Plan of Flood Control” has the meaning set forth in
35 subdivision (j) of Section 5096.805 of the Public Resources Code.

36 SEC. 5. Section 12647 is added to the Water Code, to read:

37 12647. (a) The state shall not have responsibility or liability
38 for the operation and maintenance of central valley flood control
39 facilities identified in this article unless one or more of the
40 following applies:

1 ~~(1) The department identifies the facility as part of the State~~
2 ~~Plan of Flood Control.~~

3 ~~(2) The state has explicitly accepted the transfer of liability for~~
4 ~~the facility from the federal government.~~

5 ~~(3) Board incorporates the facility into the State Plan of Flood~~
6 ~~Control pursuant to Section 9611.~~

7 ~~(b) Unless otherwise specifically provided, nothing in this article~~
8 ~~shall be construed to expand the liability of the state for the~~
9 ~~operation or maintenance of any flood management facility outside~~
10 ~~the scope of the State Plan of Flood Control, except as specifically~~
11 ~~determined by the board pursuant to Section 9611.~~

12 ~~(c) Use of the phrase “adopted and authorized” in this article~~
13 ~~does not, by itself, reflect incorporation of the specified facility~~
14 ~~into the State Plan of Flood Control or assumption of liability by~~
15 ~~the state, unless one of the conditions described in subdivision (a)~~
16 ~~applies to the facility.~~

17 ~~SEC. 6.~~

18 *SECTION 1.* Section 12670.22 is added to the Water Code, to
19 read:

20 12670.22. (a) The state may provide ~~subvention~~ funds for the
21 Middle Creek Flood Damage Reduction and Ecosystem Restoration
22 Project in Lake County substantially in accordance with the Flood
23 Damage Reduction and Environmental Restoration, Middle Creek,
24 Lake County, California: Report of the Chief of Engineers of the
25 United States Army Corps of Engineers dated November 29, 2004,
26 and as authorized by *Section 1001 (11)* of the federal Water
27 Resources Development Act of 2007 (Public Law 110-114), at an
28 estimated cost to the state of the sum that may be appropriated for
29 state cooperation by the Legislature upon the recommendations
30 and advice of the Central Valley Flood Protection Board, *including*
31 *payment for any fish and wildlife enhancement features as provided*
32 *in Section 12847.*

33 (b) ~~The~~ Lake County Watershed Protection District shall give
34 assurances satisfactory to the Secretary of the Army that the local
35 cooperation required by *state or* federal law will be furnished by
36 the district in connection with the project.

37 (c) Lake County Watershed Protection District, in conjunction
38 with the Department of the Army, shall carry out the plans and
39 project and may make modifications and amendments to the plans
40 as may be required by state or federal law.

(d) *Lake County Watershed Protection District shall enter into an agreement with the department pursuant to which the district agrees to indemnify and hold harmless and save the state, and its officers, agents, and employees, from any and all liability for damages that may arise out of the planning, design, construction, operation, maintenance, repair, and rehabilitation of the project.*

(e) *The authorization granted by this section does not affect any eligibility of Lake County Watershed Protection District to receive state funding made available pursuant to provisions of law other than this part if the receipt of those funds does not result in overpayment for any feature of the project.*

(f) *The Legislature finds and declares that the project described in subdivision (a) modifies and replaces portions of the project described in Section 12656.5. The project described in subdivision (a) shall constitute a part of the State Plan of Flood Control and the portion of the project described in Section 12656.5 that is replaced by the project described in subdivision (a) shall not constitute a part of the State Plan of Flood Control.*

~~SEC. 7.~~

SEC. 2. Section 12670.23 is added to the Water Code, to read:
12670.23. (a) The state may provide ~~subvention~~ funds for the Hamilton City Flood Damage Reduction and Ecosystem Restoration Project in Glenn County substantially in accordance with the Hamilton City Flood Damage Reduction and Ecosystem Restoration, Glenn County, California: Report of the Chief of Engineers of the United States Army Corps of Engineers dated December 22, 2004, and authorized by *Section 1001 (8) of the federal Water Resources Development Act of 2007*(Public Law 110-114), at an estimated cost to the state of the sum that may be appropriated for state cooperation by the Legislature upon the recommendations and advice of the Central Valley Flood Protection Board, *including payment for any fish and wildlife enhancement features as provided in Section 12847.*

(b) Reclamation District No. 2140 shall give assurances satisfactory to the Secretary of the Army that the local cooperation required by *state or* federal law will be furnished by the district in connection with the project.

(c) Reclamation District No. 2140, in conjunction with the Department of the Army, shall carry out the plans and project and

1 may make modifications and amendments to the plans as may be
2 required by federal or state law.

3 *(d) Reclamation District No. 2140 shall enter into an agreement*
4 *with the department pursuant to which the district agrees to*
5 *indemnify and hold harmless and save the state, and its officers,*
6 *agents, and employees, from any and all liability for damages that*
7 *may arise out of the planning, design, construction, operation,*
8 *maintenance, repair, and rehabilitation of the project.*

9 *(e) The authorization granted by this section does not affect any*
10 *eligibility of Reclamation District No. 2140 to receive state funding*
11 *made available pursuant to provisions of law other than this part*
12 *if the receipt of those state funds does not result in overpayment*
13 *for any feature of the project.*

14 ~~SEC. 8.~~

15 *SEC. 3.* No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district are the result of a program for which legislative authority
19 was requested by that local agency or school district, within the
20 meaning of Section 17556 of the Government Code and Section
21 6 of Article XIII B of the California Constitution.